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17 *Additional counsel and related cases
18 listed on next page.*

19

20

UNITED STATES DISTRICT COURT

21

NORTHERN DISTRICT OF CALIFORNIA

22

ELDRIDGE JOHNSON, an individual,

CASE NO. 3:12-CV-02730-VC

23

Plaintiff,

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT AND
[PROPOSED] ORDER**

24

vs.

25

UNITED AIR LINES, INC.;
26 CONTINENTAL AIRLINES, INC.; and
27 DOES 1-10,

28

Defendants.

Date: June 23, 2015

Time: 10:00 a.m.

Courtroom:

Judge: Hon. Vince Chhabria

Complaint filed: May 29, 2012

FAC filed: July 20, 2012

SAC filed: Nov. 30, 2012

TAC filed: May 20, 2013

Corrected TAC filed June 21, 2013

4AC filed: January 3, 2014

5AC filed: March 2, 2015

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24 CONTINENTAL AIRLINES, INC.

25
26 *Related cases:*

27 Ecung, Mario v. United Airlines, Inc. et al. 3:15-cv-00456 VC
28 Miller, Leon v. United Airlines, Inc. et al. 3:15-cv-00457 VC
Palmer, Xavier v. United Airlines, Inc. et al. 3:15-cv-00458 VC
Montgomery, United Airlines, Inc. et al. 3:15-cv-00459 VC
Gadson, Annette v. United Airlines, Inc. et al. 4:15-cv-00460 VC
Noble, Paul C. v. United Airlines, Inc. et al. 3:15-cv-00461 VC
Jones Jr., Johnnie E. v. United Airlines, Inc. et al. 3:15-cv-00462 VC
Robinson, Frederick v. United Airlines, Inc. et al. 4:15-cv-00463 VC
Roane, Glen v. United Airlines, Inc. et al. 3:15-cv-00464 VC
Ricketts, David v. United Airlines, Inc. et al. 3:15-cv-00465 VC
Tom, Lester v. United Airlines, Inc. et al. 3:15-cv-00466 VC
Crocker, Sal v. United Airlines, Inc. et al. 3:15-cv-00468 VC
Manswell, Anthony v. United Airlines, Inc. et al. 3:15-cv-00469 VC
Minter, Karl v. United Airlines, Inc. et al. 3:15-cv-00470 VC
Washington, Erwin v. United Airlines, Inc. et al. 4:15-cv-00471 VC
Wilson, Darryl v. United Airlines, Inc. et al. 3:15-cv-00472 VC
Sherman, Leo v. United Airlines, Inc. et al. 3:15-cv-00473 VC
Haney, Ken v. United Airlines, Inc. et al. 3:15-cv-00474 VC
John, Richard v. United Airlines, Inc. et al. 3:15-cv-00475 VC
Briscoe, Odie v. United Airlines, Inc. et al. 3:15-cv-00476 VC
Hartsfield, Terrence v. United Airlines, Inc. et al. 3:15-cv-00477 VC

1 Plaintiffs and Defendants hereby submit this JOINT CASE MANAGEMENT
2 STATEMENT AND PROPOSED ORDER pursuant to the Standing Order for All Judges of the
3 Northern District of California dated November 1, 2014 and Civil Local Rule 16-9.

4

5 **1. JURISDICTION & SERVICE**

6 **a. Jurisdiction and Service**

7 **Plaintiffs**

8 On June 11, 2015, Plaintiffs filed a L.R. 6-3 Motion to Change Time Re: Response to
9 June 11, 2015 Amended Order Dismissing Claims With Leave To Amend. Plaintiffs filed a
10 Petition for Writ of Mandate concerning the Court's Amended Order Dismissing Claims With
11 Leave to Amend, along with an Emergency Motion to Stay Proceedings pursuant to Ninth Circuit
12 Rule 27-3. Plaintiffs provided notice of these filings on June 12, 2015. On July 17, 2015, the
13 Ninth Circuit denied the Writ and denied the C.R. 27-3 Emergency Motion for Stay as moot.

14 No issues about the Court's jurisdiction over the claims in these matters are present. The
15 Court has jurisdiction over this action under 28 U.S.C. §1331 and 42 U.S.C. §2000e-5(f)(3) and
16 42 U.S.C. §1981. The action presents federal questions under Title VII of the Civil Rights Act of
17 1964, 42 U.S.C. §2000e, et seq., as amended, and 42 U.S.C. §1981. The Court has supplemental
18 jurisdiction over Plaintiff's California law claims pursuant to 28 U.S.C. § 1337 because the Court
19 has already ruled that the California Fair Employment and Housing Act claims arise out of the
20 same transactions and occurrences. Both remaining Defendants have been served; however
21 neither have filed an answer.

22 **Defendants**

23 Subject matter jurisdiction exists under Title VII of the Civil Rights Act of 1964 ("Title
24 VII") for each Plaintiff.

25 On June 12, 2015, Plaintiffs Briscoe, Crocker, Ecung, Haney, Hartsfield, John, Johnson,
26 Jones, Manswell, Miller, Minter, Noble, Palmer, Ricketts, Roane, Robinson, Sherman, Tom,
27 Washington, and Wilson filed a consolidated Petition for Writ of Mandamus Vacating the Court's
28 Amended Order Dismissing Claims With Leave to Amend, as well as a consolidated Emergency

1 Motion for Stay of Proceedings Pending Resolution of Petition for Writ of Mandamus.¹ On July
 2 17, 2015, the Ninth Circuit denied the Writ and denied the Emergency Motion for Stay as moot.

3 **b. Venue**

4 **Plaintiffs**

5 Plaintiffs' position is that venue remains appropriate in the Northern District of California
 6 because Plaintiffs they evidenced an interest in a position that resulted in Plaintiffs working in the
 7 Northern District of California. The allegations of the Sixth Amended Complaints will make
 8 resolve the venue question. Plaintiffs have asked Defendants not to reargue venue motions in
 9 the Case Management Statement, and Plaintiffs will not brief venue issues in this Case
 10 Management Statement.

11 **Defendants**

12 In Defendants' last CMC statement, Defendants described the need to address venue at the
 13 earliest reasonable time.² However, as the Court and counsel have addressed, venue cannot be
 14 easily or properly assessed based on the Plaintiffs' Fifth Amended Complaints ("5AC") because
 15 the only connection to the Northern District of California of many plaintiffs arises out of alleged
 16 discrimination in connection with placement into identical "special assignments." Rather than
 17 stating individualized claims after this case was severed, 20 pilot Plaintiffs merely cut-and-pasted
 18 into the 5ACs 43 to 48 identical special assignments from the general allegations of the prior
 19 complaint. Amendment was clearly needed to address a misguided attempt to manipulate venue
 20 by alleging a connection to the Northern District through implausible, overlapping allegations that
 21 lacked foundation.

22 This Court issued an Order to Show Cause ("OSC") on April 13, 2015 as to all of the
 23 related cases except Haynie, Gadson and Montgomery (discussed below). Following briefing
 24 and hearing on the Court's OSC, the Court ordered each Plaintiff to file a Sixth Amended
 25 Complaint on or before June 12, 2015, correcting deficient allegations as to unposted positions
 26

27 ¹ See, e.g., Case No. 3:12-cv-02730-VC (Johnson), Dkts. 172, 172-1, 172-2, filed 6/12/15.

28 ² Venue has been and remains expressly reserved to a time that the Court deems appropriate to
 address it in any case where venue remains at issue.

1 and special assignments.³ They failed to do so. Instead, on June 11, 2015, each Plaintiff filed a
 2 motion seeking an extension of time to file a Sixth Amended Complaint.⁴

3 The Motion to Change Time filed on behalf of each Plaintiff is belated, improper and
 4 unsupported by good reason. Plaintiffs had ample opportunity at the last status conference on
 5 May 21, 2015 (when the Court discussed its ruling dismissing Plaintiffs' unposted position and
 6 special assignment allegations with leave to amend), as well as three weeks thereafter, to clarify
 7 any purported confusion over the Court's ruling. Delay could not have been occasioned by the
 8 Court's June 11 Amended Order, as the Amended Order did nothing to change the substance of
 9 the Court's ruling on dismissal; it merely clarified the already clear point that posted positions
 10 were not the subject of the OSC or order thereon.

11 In light of Plaintiffs' (1) failure to state viable claims, and (2) failure to file sixth amended
 12 complaints as ordered by this Court four weeks ago on May 22, 2015, Plaintiffs' claims as to
 13 unposted positions and special assignments should be dismissed now, with prejudice.
 14 Accordingly, the 5ACs brought by 7 Plaintiffs (Ecung, Haney, Miller, Palmer, Ricketts,
 15 Robinson, and Washington) should be dismissed in their entirety, without further leave to amend,
 16 as their claims are based solely on deficient allegations which relate to unposted positions and
 17 special assignments that fail to state a claim. As for the remaining 13 Plaintiffs (Briscoe,
 18 Crocker, Hartsfield, John, Johnson, Jones, Manswell, Minter, Noble, Roane, Sherman, Tom, and
 19 Wilson), all of the claims of each Plaintiff relating to unposted positions and special assignments
 20 in the 5AC should be dismissed with prejudice for failure to state a claim. Plaintiffs should
 21 thereafter be ordered to immediately file an amended complaint for any of the 13 plaintiffs who
 22 alleges that he was discriminated against because of his race in the failure to promote him to a
 23

24 _____
 25 ³ See, e.g., Order Dismissing Claims With Leave to Amend, Case No. 3:15-cv-00456-VC
 26 (Ecung), Dkt. 34 ("May 22 Order"); Amended Order Dismissing Claims With Leave to Amend,
 Case No. 3:12-cv-02730-VC (Johnson), Dkt. 169, filed 6/11/15 ("June 11 Order"); see also
 Section 2 (Facts), below.

27 ⁴ See, e.g., Plaintiff's L.R. 6-3 Motion to Change Time Re: Response to June 11, 2015 Amended
 28 Order Dismissing Claims With Leave To Amend, Case No. 3:12-cv-02730-VC (Johnson), Dkt.
 171, filed 6/11/15.

1 posted position as already alleged in the 5AC.⁵ Once amended complaints are filed for the 13
 2 individual plaintiffs who allege disparate treatment claims relating to posted positions, a briefing
 3 schedule for Defendants' responsive pleadings to each complaint and for venue motions is
 4 suggested.

5 Alternatively, if the Court gives Plaintiffs an extended opportunity to comply with its
 6 order to file amended complaints that include allegations, if any, as to individualized claims
 7 relating to disparate treatment in the failure to promote to unposted positions or special
 8 assignments, then any such amended complaints first should be filed and related pleading
 9 challenges resolved, before addressing venue, which Defendants continue to expressly reserve.

10 **Defendants' Venue Analysis**

11 Venue in this case must be determined under Title VII, 42 U.S.C. § 2000e-5(f)(3), which
 12 confers venue in either (1) a judicial district in the state in which the "unlawful employment
 13 practice is alleged to have been committed";⁶ (2) the judicial district in which "the employment
 14 records relevant to such practice are maintained and administered"; or (3) the judicial district in
 15 which "the aggrieved person would have worked but for the alleged unlawful employment
 16 practice."⁷ For those Plaintiffs where venue is proper, Defendants seek transfer under 28 U.S.C.
 17 § 1404 (a), for the "convenience of the parties and witnesses and in the interests of justice."

18 Venue motions are anticipated as to the Plaintiffs other than Johnson and Hartsfield.
 19 Defendants' venue analysis is most easily analyzed based on two different groups of Plaintiffs.

20 *Group #1: No Connection to the Northern District Except Identical Special Assignments
 21 Allegedly Denied to Multiple Plaintiffs.*

22

23⁵ To promote efficiency and manageability Defendants urge the filing of amended complaints
 24 which contain only those claims relating to posted positions allegedly denied because of race.

25⁶ Employment practices are committed where an adverse employment decision is made or where
 26 the effect of the decision is felt, namely, where the employee works. *Passantino v. Johnson &*
Johnson Consumer Prods. Inc., 212 F.3d 493, 505 (9th Cir. 2000).

27⁷ Section 5(f)(3) also contains a default provision, inapplicable here, which is triggered if
 28 Defendants cannot be found in the judicial districts subject to the first three prongs. It provides
 "but if the respondent is not found within any such district, such an action may be brought within
 the judicial district in which the respondent has his principal office."

1 Some Plaintiffs have no connection to the Northern District except special assignments.
 2 These Plaintiffs, among others, implausibly allege that somewhere between 43 and 48 of the
 3 identical special assignments were denied to each of them. Special assignments cannot be used to
 4 ground venue in the Northern District of California. Venue is improper in these cases.⁸

5 *Group #2: Forum Non Conveniens.*

6 Defendants will request that venue be transferred based on 28 U.S.C. § 1404(a) (except
 7 Johnson and Hartsfield). The most convenient forum for the parties is the district where each
 8 Plaintiff is domiciled. In addition to the fact that personnel files are administered and maintained
 9 at the domicile, witnesses and evidence are located there. Importantly, the Plaintiffs' supervisors
 10 are typically domiciled in the same locations as the Plaintiffs. It is anticipated that supervisors
 11 sharing each Plaintiff's domicile will be involved in the defense of the case, including appearing
 12 for litigation events such as hearings and trial.

13 Previously, Plaintiffs argued that venue is proper based on electronic records related to
 14 promotions that are stored in the Northern District by a software application known as "Taleo."
 15 To the extent Plaintiffs intend to rely on this same argument, they are wrong. The law and facts
 16 do not support their theory.

17

18 **2. FACTS**

19 **Plaintiffs**

20 Plaintiffs each allege that they suffered from a pattern and practice of race discrimination,
 21 based on Defendants' employment policies and practices. Such uniform and company-wide
 22 policies and practices include:

- 23 (a) Failure to consistently post job and promotional openings;
- 24 (b) Limiting promotions to individuals with special assignment experience;
- 25 (c) The closing and reopening of job postings to deny interviews;

26

27 ⁸ All allegations as to special assignments and unposted positions should be dismissed with
 28 prejudice, in light of the Court's May 22 and June 11 Orders finding that such allegations fail to
 state a claim, and Plaintiffs' subsequent failure to amend their complaints as ordered by the Court.

- 1 (d) Reliance upon unweighted, arbitrary, and subjective criteria;
- 2 (e) Reliance on racial stereotypes;
- 3 (f) Pre-selection and “grooming” of non-African-American employees;
- 4 (g) Maintenance of largely racially segregated job categories and departments;
- 5 (h) Deterrence and discouragement

6 These specific employment practices are common to all Plaintiffs' claims, as will be set
 7 forth in Plaintiffs' Sixth Amended Complaints.

8 Plaintiffs allege that problems resulting from these practices were systemic and company-
 9 wide. Plaintiffs have identified, and the Court has ruled that Plaintiffs have stated, claims under
 10 Title VII, the FEHA, and 42 U.S.C. §1981 as to three specific categories of these company-wide
 11 practices: (1) temporary management positions⁹, (2) unposted permanent management positions,
 12 and (3) posted permanent management positions. These promotions demonstrate a pattern and
 13 practice of Company-wide discrimination.

14 **Defendants**

15 Defendants United Airlines, Inc. and Continental Airlines, Inc. operated as separate
 16 airlines until a merger in 2010, when they became two wholly owned subsidiaries of United
 17 Continental Holdings, Inc. All 20 Plaintiffs with actions before this Court are pilots.¹⁰ All
 18 Plaintiffs were employed before the merger, and many assert claims related to pre-2010 merger
 19 occurrences. Briscoe and Sherman worked for Continental prior to the merger, whereas the
 20 remaining Plaintiffs worked for United.

21

22 ⁹ Defendants have repeatedly referred to these positions as “temporary management positions” in
 23 this litigation, despite its new-found claim that these positions are not actionable under Title VII
 24 because they are not “promotions”. *See Barefield v. Chevron U.S.A.*, 1997 U.S. Dist. LEXIS
 25 237, *25 n.13 (N.D. Cal. Jan. 2, 1997) (finding that defendant-employer's appointments were
 26 promotions rather than “lateral reassignments” based on the rank, authority, and prestige of the
 27 positions at issue, and rejecting the contention that an immediate pay increase was a legal
 prerequisite of a promotion); *Hunt v. City of Markham*, 219 F.3d 649 (7th Cir. 2000) (denial of
 raise and denial of temporary promotion actionable under Title VII). Defendants have not been
 specific in how the newly-raised question of whether these temporary management positions are
 actionable will impact the venue motion or the case schedule.

28 ¹⁰ Plaintiffs Gadson and Montgomery, whose cases recently were transferred out of this Court, are
 airport operations supervisors.

1 Each Plaintiff is based at a specific airport location which is referenced by an airport code,
 2 and commonly known as the domicile. For instance, a pilot based in San Francisco will have a
 3 code of SFO. Six Plaintiffs allege they are based in California, two in San Francisco (Hartsfield,
 4 Johnson) and four in Los Angeles (Ecung, Miller, Palmer and Crocker).¹¹ The remaining 14
 5 Plaintiffs are based in Virginia, Colorado, New Jersey, Texas, Illinois, and New York.

6 Although this is a failure-to-promote case, many Plaintiffs do not allege that they applied
 7 for a single position posted on the software application, Taleo. Instead they claim discrimination
 8 with respect to many of the same unposted positions (i.e. positions that purportedly did not appear
 9 in Taleo) as well as many of the same, temporary, special assignments. Other Plaintiffs claim
 10 discrimination with respect to allegedly denied promotions for a range of posted positions, in
 11 addition to overlapping unposted positions and special assignments. The claims implicate many
 12 different time periods. Plaintiffs have diverse backgrounds, training, qualifications and
 13 experience.

14 Plaintiffs originally filed a single lawsuit on May 29, 2012, and then voluntarily amended
 15 the complaint on July 20, 2012. Since then, Defendants have filed several motions and the then-
 16 assigned Court (Hon. Maxine Chesney) issued several orders as to deficiencies in what was then a
 17 combined 23 plaintiff case, including Plaintiffs' failure to meet the minimum pleading standards
 18 of Federal Rule of Civil Procedure ("FRCP") 8. Judge Chesney granted Defendants' motion to
 19 sever on February 2, 2015, and Plaintiffs filed their 5ACs. However, the 5ACs were not
 20 individualized, and contained previously dismissed claims¹² as well as generalized discrimination

21
 22 ¹¹ Crocker became domiciled in Los Angeles in 2014. Previously he was domiciled outside of
 California.

23 ¹² Plaintiffs' counsel verbally agreed to stipulate to remove all dismissed claims. On or about
 24 March 18, 2015, defense counsel sent a stipulation detailing those claims. However, to date,
 25 Defendants have not received a signed stipulation. Instead, Plaintiffs improperly continue to rely
 26 on and represent that the previously dismissed allegations are a basis for their claims. *See, e.g.*,
 Petition for Writ of Mandamus Vacating the Court's Amended Order Dismissing Claims With
 27 Leave to Amend, Case No. 3:12-cv-02730-VC (Johnson), Dkt. 172-1, filed 6/12/15 ("Each
 28 Petitioner alleges United's policy and practice of not posting special assignments, includes the
 following positions... (1) temporary and/or acting Flight Manager ("FO" and Captain) ... (14)
 Training Committee, with a corresponding increase in pay and pension contributions, from 2008
 to the present in all domiciles.").

1 claims under Title VII, Section 1981, and the California Fair Employment and Housing Act
 2 (“FEHA”).¹³ The 23 individual cases were eventually all deemed “related” and all assigned to
 3 this Court.

4 Plaintiffs’ statement that “the Court has ruled Plaintiffs have stated claims” as to
 5 “temporary management positions” and “unposted permanent management positions,” is
 6 inaccurate. As an initial but fundamental matter, no other court has ever examined the sufficiency
 7 of any complaint filed individually on behalf of each single plaintiff. Further, during a March 24,
 8 2015 Case Management Conference, and a further conference on April 9, 2015, this Court
 9 expressly questioned the sufficiency of the Plaintiffs’ 5ACs, which contained identical allegations
 10 that were cut-and-pasted from their prior, collectively filed 4AC.¹⁴ This Court then issued an
 11 OSC with respect to each Plaintiff’s disparate treatment claims, except Haynie, Gadson, and
 12 Montgomery.

13 Following briefing on the OSC, on May 22, 2015, the Court dismissed without prejudice
 14 the 5ACs of 7 Plaintiffs (Ecung, Haney, Miller, Palmer, Ricketts, Robinson, and Washington),
 15 finding that their complaints failed to state a claim as to unposted positions and special
 16 assignments.¹⁵ Similarly, as to 13 Plaintiffs (Briscoe, Crocker, Hartsfield, John, Johnson, Jones,
 17 Manswell, Minter, Noble, Roane, Sherman, Tom, and Wilson), the Court dismissed without
 18 prejudice their claims relating to unposted positions and special assignments, but not claims
 19 related to posted positions.¹⁶ In each of the 20 cases, the Court ordered Plaintiffs to file an
 20 amended complaint by June 12, 2015, to state a claim as to unposted positions and special
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 23 ¹³ Some Plaintiffs do not have FEHA claims.

24 ¹⁴ See Transcript of Proceedings on 4/9/15, Case No. 3:15-cv-00460-VC, Dkt. 24, 17:10-20
 25 (“You have to include factual allegations in the complaint that, if proven true, would state a claim
 26 for race discrimination. I don’t believe you’ve done that in any of these 22 complaints, which
 27 you’ve cut and pasted from your prior complaint and you filed identical complaints on behalf of
 28 22 plaintiffs”).

¹⁵ See, e.g., Order Dismissing Claims With Leave to Amend, Case No. 3:15-cv-00456-VC
 (Ecung), Dkt. 34.

¹⁶ See e.g., Amended Order Dismissing Claims With Leave to Amend, Case No. 3:12-cv-02730-
 VC (Johnson), Dkt. 169, filed 6/11/15.

1 assignments. *See* May 22 and June 11 Orders. However, as of the submission of this Joint Case
 2 Management Conference Statement, Plaintiffs have failed to file any amended complaints.

3 Instead, on June 7, 2015, each Plaintiff filed a Request for Certification of Direct
 4 Interlocutory Appeal of the Court's Order Dismissing Claims with Leave to Amend, as well as a
 5 Request for Stay Pending Certification for Interlocutory Appeal or Mandamus Relief.¹⁷ After the
 6 Court denied Plaintiffs' motions,¹⁸ Plaintiffs sought an extension of time to file their amended
 7 complaints.¹⁹ Plaintiffs concurrently challenged the Court's order through a consolidated Writ of
 8 Mandamus, and requested an emergency stay of proceedings pending disposition of the Writ.²⁰
 9 On June 17, 2015, the Ninth Circuit denied Plaintiffs' recent submissions.

10 Three Plaintiffs were omitted from the OSC: Plaintiffs Gadson, Montgomery, and
 11 Haynie. As to Gadson and Montgomery, the Court granted Defendants' motion to transfer the
 12 cases. *See* 5/22 Transfer Order, Dkt. 31 (Gadson); Dkt. 34 (Montgomery). Plaintiff Haynie's
 13 case was transferred to the Eastern District of Virginia on May 8, 2015, pursuant to the parties'
 14 stipulation.²¹

15 Finally, Defendants have provided three detailed charts, attached hereto as Exhibits A-C,
 16 which graphically demonstrate the number and type of special assignments, unposted positions,
 17 and posted positions allegedly denied to each Plaintiff, under each statute. These charts were
 18 designed to be helpful to the Court and counsel in assessing all of the substantive and procedural
 19 issues presented by the 20 cases before the Court.

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23 ¹⁷ *See, e.g.*, Case No. 3:12-cv-02730-VC (Johnson), Dkts. 167, 168.

24 ¹⁸ *See, e.g.*, Order Denying Motion to Certify Appeal and Denying Motion to Stay, Case No.
 3:12-cv-02730-VC (Johnson), Dkt. 170, filed 6/11/15.

25 ¹⁹ *See, e.g.*, Plaintiff's L.R. 6-3 Motion to Change Time Re: Response to June 11, 2015 Amended
 Order Dismissing Claims With Leave to Amend, Case No. 3:12-cv-02730-VC (Johnson), Dkt.
 171, filed 6/11/15.

26 ²⁰ *See, e.g.*, Petition for Writ of Mandamus Vacating the Court's Amended Order Dismissing
 Claims With Leave to Amend, Case No. 3:12-cv-02730-VC (Johnson), Dkts. 172, 172-1, 172-2,
 filed 6/12/15.

27 ²¹ *See* Order of Transfer, Case No. 3:15-cv-00467-VC, Dkt. 28, filed 5/8/15.

1 **3. LEGAL ISSUES**

2 **Plaintiff**

3 Depending upon what Defendants choose to deny or admit from the Sixth Amended
4 Complaint, and what affirmative defenses Defendants choose to assert, the principal legal issues
5 in dispute at the present time include:

- 6 • Whether Defendants can offer a legitimate business reason for not permitting Plaintiffs
7 to participate in temporary management positions.
- 8 • If Defendants can articulate a legitimate business reason for not permitting Plaintiffs
9 to participate in temporary management positions, whether such reason is worthy of
10 credence, or is more likely than not pretext for discrimination.
- 11 • Whether Defendants can offer a legitimate business reason for not permitting Plaintiffs
12 to participate in permanent management positions.
- 13 • If Defendants can articulate a legitimate business reason for not permitting Plaintiffs
14 to participate in permanent management positions, whether such reason is worthy of
15 credence, or is more likely than not pretext for discrimination.
- 16 • Whether Defendants can offer a legitimate business reason for not selecting Plaintiffs
17 for the permanent management positions which were posted and for which Plaintiffs
18 applied.
- 19 • If Defendants can articulate a legitimate business reason for not selecting Plaintiffs for
20 the permanent management positions which were posted and for which Plaintiffs
21 applied, whether such reason is worthy of credence, or is more likely than not pretext
22 for discrimination.
- 23 • Whether Defendants chose to exclude Plaintiffs from management opportunities with
24 malice and a conscious disregard for their rights sufficient to support an award of
25 punitive damages.

26 **Defendants**

27 Continued early attention by the Court to the problems that have arisen from the 3-year
28 history and cut-and-paste approach taken in the 5ACs is necessary and appropriate to ensure fast

1 and efficient litigation. Federal Rule of Civil Procedure 16(c)(2)(L) authorizes the Court to adopt
 2 “special procedures for managing potentially difficult or protracted actions that may involve
 3 complex issues, multiple parties, difficult legal questions, or unusual proof problems.” Before
 4 disclosures and discovery, each Plaintiff should be required to state allegations that support his
 5 disparate treatment claims.²²

6 Principal legal issues in dispute at the present time include:

- 7 • Whether 7 Plaintiffs’ (Ecung, Haney, Miller, Palmer, Ricketts, Robinson, and
 Washington) actions should be dismissed, with prejudice, for failure to amend
 8 pursuant to the Court’s May 22, 2015 Order Dismissing Claims With Leave to
 9 Amend.
- 10 • Whether 13 Plaintiffs’ (Briscoe, Crocker, Hartsfield, John, Johnson, Jones, Manswell,
 Minter, Noble, Roane, Sherman, Tom, and Wilson) allegations relating to unposted
 11 positions and special assignments should be dismissed and/or stricken, with prejudice,
 12 and their claims limited to the alleged failure to receive posted positions, for failure to
 13 amend pursuant to the Court’s June 11, 2015 Amended Order Dismissing Claims With
 14 Leave to Amend.
- 15 • Whether 13 Plaintiffs should file amended complaints limited to any remaining
 16 disparate treatment claims relating to the alleged failure to receive posted positions as
 17 the result of disparate treatment.²³
- 18 • Whether a conflict of interest exists in the representation of multiple plaintiffs who
 19 allege discriminatory failure to promote to the same positions, and, if so, whether a
 20 briefing schedule should be set to address any such issues.

21
 22 _____
 23 “Investing time in the early stages of the litigation . . . will lead to earlier dispositions, less
 wasteful activity, shorter trials, and, in the long run, economies of judicial time and fewer judicial
 burdens.” Manual for Complex Litigation (“MCL”) § 10.1.

24
 25
 26
 27
 28 ²³ No new claims are permitted without order of the Court. *See Order Granting Motion to Sever,*
 Case No. 3:12-cv-02730-MMC, Dkt. 130, filed 2/2/15 (“In each new case... the named plaintiff
 is hereby DIRECTED to file, no later than March 2, 2015, a Fifth Amended Complaint... Each
 such plaintiff may not add new claims or new defendants without leave of court.”).

- Whether the Plaintiffs (except Johnson and Hartsfield) have brought claims in an improper or inconvenient venue, requiring dismissal or transfer pursuant to FRCP 12(b)(3), 42 U.S.C. § 2000e-5(f)(3), 28 U.S.C. § 1404, 1406.
 - Whether, in their 5ACs, Plaintiffs improperly re-allege a number of claims previously dismissed by the Johnson Court with prejudice.
 - Whether Continental Airlines, Inc. is improperly named as a Defendant and must be dismissed.
 - To the extent Plaintiffs' 5AC allegations based on special assignments are not dismissed with prejudice for failure to state a claim: Whether special assignments, which are not posted, are, in fact, promotions, and, if not, whether special assignment claims must be eliminated from the case.
 - Whether each Plaintiff's claims are barred by the statute of limitations.
 - Whether the Operative Complaint and each claim contained therein fails to state a claim upon which relief can be granted.
 - Whether triable issues of fact exist as to each Plaintiff's claims.
 - Whether each Plaintiff can prove a prima facie case of disparate treatment based upon race.
 - If each Plaintiff establishes a prima facie case of disparate treatment (i.e., the existence of an adverse employment action, intentional discrimination in the failure to promote in a defined specific instance, causation), then: whether the decisions related to each specific promotion or special assignment at issue for each individual Plaintiff in the 5AC were made for legitimate, non-discriminatory reasons.
 - If each Plaintiff establishes a prima facie case and Defendants establish a legitimate, non-discriminatory reason, then: whether each Plaintiff can prove that Defendants' proffered non-discriminatory reasons for rejecting each Plaintiff for each promotion to an available position or special assignment at issue in the 5AC were actually a pretext for discrimination.
 - Whether each Plaintiff can prove causation and any recoverable damage as a result of

1 any alleged unlawful conduct by Defendants.
2

3 **4. MOTIONS**

4 **Plaintiffs**

5 As set forth above, Plaintiffs do not currently anticipate any motions other than the
6 pending motion to enlarge time to respond to the Court's Amended Order Dismissing Claims
7 With Leave to Amend to permit the filing of the Sixth Amended Complaints. Depending upon
8 the admissions, denials and affirmative defenses set forth in Defendants' answer, Plaintiffs may
9 file Fed. R. Civ. P. 12(b)(6) motions as to defenses, Fed. R. Civ. P. 34 dispositive motions,
10 Daubert motions, consolidation motions for appropriate trial or dispositive motions, and motions
11 in limine for trial.

12 **Defendants**

13 Defendants anticipate the following motions at this time:

- 14 • Motions to Dismiss and/or Transfer Plaintiffs' Operative Complaints for
15 Improper/Inconvenient Venue ("Venue Motions") except in the cases of Johnson and
16 Hartsfield.
- 17 • To the extent Plaintiffs are afforded an extended opportunity to comply with the
18 Court's order to amend their complaints to state a claim: Motion to Dismiss/Strike
19 Claims for Failure to State a Claim.
- 20 • Motion to Dismiss/Strike Improperly Realleged Claims (to the extent the parties are
21 unable to stipulate and improperly realleged claims are not voluntarily removed from
22 the operative complaints).
- 23 • Motion for Judgment on the Pleadings.
- 24 • Motion for Protective Order re: Confidentiality to Protect Proprietary, Confidential,
25 Private Information (to the extent the parties are unable to agree).
- 26 • Motion to Bifurcate/Sever/Phase Litigation.
- 27 • Potential discovery motions.
- 28 • Motions for Summary Judgment or Partial Summary Judgment.

- 1 • Motions in Limine.
- 2

3 **5. AMENDMENT OF PLEADINGS**

4 **Plaintiffs**

5 Now that the Ninth Circuit has resolved Plaintiffs' Petition for Writ of Mandate Plaintiffs
6 seek leave to file their Sixth Amended Complaints, and Suggest June 30, 2015 as the cutoff in the
7 schedule set forth below. Plaintiffs may move to have the pleadings conform to the evidence
8 adduced in discovery and at trial.

9 **Defendants**

10 Over the course of more than three years, Plaintiffs have been afforded multiple
11 opportunities to state a viable claim of disparate treatment discrimination as based on the alleged
12 failure to receive unposted positions and special assignments. On May 22 and June 11, 2015,
13 Plaintiffs were given "one more opportunity" to amend their 5ACs to state a claim of
14 discrimination based on alleged disparate treatment in the failure to be promoted to unposted
15 positions and special assignments, no later than June 12, 2015. *See* May 22 and June 11 Orders.
16 Plaintiffs failed to do so. Plaintiffs have been on notice since the May 21 hearing that they would
17 have to amend the complaints. Having failed to comply with the Court's express orders,
18 Plaintiffs' claims – to the extent based on unposted positions and special assignments – should be
19 dismissed without further leave to amend.

20 Accordingly, the 5ACs brought by 7 Plaintiffs (Ecung, Haney, Miller, Palmer, Ricketts,
21 Robinson, and Washington) should be dismissed in their entirety, without further leave to amend,
22 as their claims are based solely on deficient allegations of unposted positions and special
23 assignments that fail to state a claim. As for the remaining 13 Plaintiffs (Briscoe, Crocker,
24 Hartsfield, John, Johnson, Jones, Manswell, Minter, Noble, Roane, Sherman, Tom, and Wilson),
25 any allegations of unposted positions and special assignments pled in their 5ACs should be
26 dismissed or stricken with prejudice.

1 In sum, the only remaining actions should be those brought by the 13 Plaintiffs listed
2 above. Each of those actions should be limited to claims of disparate treatment based on the
3 alleged failure to receive posted positions.

4

5 **6. EVIDENCE PRESERVATION**

6 **Plaintiffs**

7 Plaintiffs have taken reasonable efforts to preserve all evidence and continue to do so.

8 **Defendants**

9 Defendants have taken reasonable efforts to preserve all evidence and continue to do so.

10

11 **7. DISCLOSURES**

12 **Plaintiffs**

13 Plaintiffs have proposed exchange of initial disclosures in all matters for July 15, 2015.

14 **Defendants**

15 Defendants have met and conferred about initial disclosures. Defendants propose that
16 initial disclosures be exchanged in two phases as described below in Section 17.²⁴

17

18 **8. DISCOVERY**

19 **Plaintiffs**

20 Plaintiffs' discovery plan is included in its detailed case plan set forth below in the
21 comprehensive schedule in Section 17.

22 **Defendants**

23 Defendants' discovery plan is included in its detailed case plan set forth below in the
24 comprehensive schedule in Section 17.

25

26

27

28 ²⁴ Discovery and initial disclosures are currently stayed pursuant to of the Court's order in
Johnson, which attaches to this case. Aug. 8, 2014 Tr. at 25:18-26:20.

1 **9. CLASS ACTIONS**

2 The present cases are not class actions.

3 **10. RELATED CASES**

4 In the Northern District of California:

- 5
- 6 • *Haynie v. United Airlines, Inc. et al.*, 4:15-cv-00467 VC.
 - 7 • *Montgomery v. United Airlines, Inc.*, 3:15-cv-00459-VC
 - 8 • *Gadson v. United Airlines, Inc.*, 3:15-CV-00460-VC

9 In other jurisdictions:

- 10
- 11 • *Haynie v. United Airlines, Inc. et al.*, Case No. 1:15-cv-00604-LMB-JFA (recently transferred to Eastern District of Virginia).
 - 12 • *Haynie v. United Airlines, Inc. et al.*, Case No. 1:15-cv-00625-LMB-IDD (pending in the Eastern District of Virginia).²⁵
 - 13 • *Gadson v. Continental Airlines, Inc. et al.*, Case No. 2:15-cv-03642-MCA-MAH (recently transferred to District of New Jersey).
 - 14 • *Montgomery v. United Airlines, Inc. et al.*, Case No. 1:15-cv-00697-LO-JFA (recently transferred to Eastern District of Virginia).

15 **11. RELIEF**

16 **Plaintiffs**

17 Plaintiffs have each prayed for comprehensive injunctive relief to address the company-wide practices at the heart of Plaintiffs' individual claims, in addition to back and front pay, general and special damages, attorney's fees, interest, costs of suit, and punitive damages.

18 **Defendants**

19 Defendants deny that each Plaintiff is entitled to any of the relief sought.

20

21 ²⁵ On May 14, 2015, Plaintiff Haynie initiated a new action and filed a new Complaint in the

22 Eastern District of Virginia, alleging claims based on the same facts and series of transactions as

23 are pled in his 5AC, also pending before the Eastern District of Virginia pursuant to this Court's

24 transfer of the case.

1 **12. SETTLEMENT AND ADR**

2 **Plaintiffs**

3 The parties have not yet engaged in any ADR efforts. Plaintiffs remain amenable to
4 private or panel mediation. Defendants have not responded to Plaintiffs' offers to engage in
5 ADR.

6 **Defendants**

7 Defendants do not wish to engage in alternative dispute resolution at this time.

9 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

10 **Plaintiffs**

11 The parties have previously declined to have a Magistrate Judge assigned for all purposes.

12 **Defendants**

13 Defendants do not consent to have a magistrate judge conduct further proceedings.

15 **14. OTHER REFERENCES**

16 **Plaintiffs**

17 This case is not currently suitable for reference to binding arbitration, a special master, or
18 the Judicial Panel on Multidistrict Litigation.

19 **Defendants**

20 The case is not suitable for reference to binding arbitration, a special master, or the
21 Judicial Panel on Multidistrict Litigation.

23 **15. NARROWING OF ISSUES**

24 **Plaintiffs**

25 The prior motions to dismiss and strike in this matter have already narrowed the claims
26 and issues as to each Plaintiff.

1 **Defendants**

2 Individualized complaints, setting forth the specific alleged disparate treatment for each
 3 Plaintiff, are critical not only to narrow the issues but to the orderly litigation of each of the 20
 4 cases that remain before this Court. In the event Plaintiffs are afforded an extended opportunity
 5 to comply with the Court's order to amend their complaints, and any such amended complaints
 6 still fail to assert individualized claims, Defendants intend to file motions to dismiss or strike with
 7 prejudice any deficient claims and/or allegations. Similarly, to the extent Plaintiffs continue to
 8 include previously dismissed allegations in their operative complaints, Defendants will move to
 9 strike any such allegations.

10

11 **16. EXPEDITED TRIAL PROCEDURE**

12 **Plaintiffs**

13 Plaintiffs are currently aware of no facts which would support the use of Expedited Trial
 14 Procedures in these matters.

15 **Defendants**

16 This case is not suitable to be handled under the Expedited Trial Procedure of General
 17 Order 64, Attachment A.

18

19 **17. SCHEDULING**

20 **Plaintiffs**

21 Assuming that the Ninth Circuit Court of Appeals rules upon Plaintiffs Petition for Writ of
 22 Mandate by July 15, 2015, Plaintiffs propose that the Court actively coordinate discovery in the
 23 various matters. Plaintiffs propose the following schedule:

06/30/15	Sixth Amended Complaints Filed
July 15, 2015	Answers to Sixth Amended Complaints
07/15/15	Initial disclosures and commencement of fact discovery

1	08/01/15	Case Management Conference for Discovery Scheduling – Documentary Evidence of Specific Promotion Decisions
2	10/01/15	Case Management Conference for Coordination of Fact Discovery – Deposition Phasing: Plaintiffs/Comparators/Decisionmakers
3	12/01/15	Case Management Conference for Coordination of Fact Discovery
4	02/01/16	Case Management Conference for Coordination of Fact Discovery
5	04/01/16	Case Management Conference for Coordination of Fact Discovery
6	07/01/16	Completion of Non-Expert Discovery: and Case Management for Consolidation Of Issues/Claims for Dispositive Motions
7	09/15/16	Hearing(s) on Consolidated Dispositive Motions
8	10/15/16	Last Day To Designate Experts And Produce Expert Reports
9	11/15/16	Last Day To Designate Rebuttal Experts And Produce Supp. Reports:
10	12/01/16	Completion of Expert Discovery
11	01/15/17	Hearing on Motions for Consolidation and Initial Pretrial Conference For First Matter
12	02/15/17	First Trial Date
13	03/15/17	Subsequent trials scheduled every 30 days with agreed upon breaks.
14		

Defendants

Defendants propose the following case plan and schedule:

	The 5ACs brought by Plaintiffs Ecung, Haney, Miller, Palmer, Ricketts, Robinson, and Washington are dismissed without further leave to amend.
	All allegations of discrimination based on unposted positions and special assignments are stricken or dismissed without further leave to amend from the 5ACs of Plaintiffs Briscoe, Crocker, Hartsfield, John, Johnson, Jones, Manswell, Minter, Noble, Roane, Sherman, Tom, and Wilson. These 13 Plaintiffs' actions are ordered to proceed only as to their disparate treatment claims as based on their alleged failure to receive posted positions.
6/23/15	CMC. ²⁶
6/26/15	Deadline to file Sixth Amended Complaints
30 days after Sixth Amended Complaints filed	Respond to Sixth Amended Complaints (by answer, or motions to dismiss strike and/or transfer venue.

²⁶ Dispositive motions may be filed any time prior to motion hearing cutoff.

1	At the Earliest Reasonable Time Before Any Initial Disclosures or Discovery	Briefing To Address Any Actual or Potential Conflict of Interest
2		
3		
4	15 days after responsive pleadings filed And After Any Conflict of Interest Issues Are Addressed	Exchange initial disclosures and stay on written discovery lifted as to complaints not addressed by any motion to strike or dismiss.
5		
6		
7		
8	20 days after pleadings are settled	Meet and confer regarding deposition scheduling as to cases where pleadings are settled.
9	10/28/15- 6/30/16	Plaintiffs' depositions. ²⁷
10		
11	4 months prior to trial	Expert exchange.
12		
13	21 days after initial exchange	Rebuttal expert exchange.
14		
15	3 months prior to trial	Fact and expert discovery cut-off.
16		
17	7 weeks prior to trial	Motion hearing cutoff.
18		
19	2 weeks prior to trial	Pretrial conference on first case.
20		
21	5/15/17	Trial for first case; with subsequent trials scheduled every 30 days with agreed upon breaks in between.
22		
23		
24		
25		
26		

18. TRIAL

Plaintiffs

Plaintiffs have requested trial by jury, and anticipate motions to consolidate matters for trial based upon common questions of law and fact developed through discovery. Accordingly, trial estimates would range from five days to weeks, depending upon which claims may be tried together. The foregoing schedule anticipates that if no consolidation occurs, that individual trials would commence February 15, 2017 and proceed on a rolling or overlapping schedule, where the pretrial conference on the next trial occurs one week after the start of the last trial.

²⁷ Defendants hope to complete Plaintiffs' deposition as expeditiously as possible and have proposed this window of time for completion of the depositions. All dates are contingent upon pleadings being settled. Dates are preliminary only and may need adjustment

1 **Defendants**

2 It is not possible or productive to attempt to estimate the expected length of trial at this
3 time. Consolidation of the 20 individual cases before this Court is not appropriate.

4

5 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

6 **Plaintiffs**

7 Plaintiffs have no such entities or persons to disclose.

8 **Defendants**

9 Defendants filed a Certification of Interested Entities or Persons on August 29, 2012 in the
10 *Johnson* matter. Defendants certify as of this date, pursuant to Civil L.R. 3-15, that the following
11 listed persons, associations of persons, firms, partnerships, corporations (including parent
12 corporations) or other entities (i) have a financial interest in the subject matter in controversy or
13 in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party
14 that could be substantially affected by the outcome of this proceeding: Defendants United
15 Airlines, Inc. and United Continental Holdings, Inc.

16

17 **20. PROFESSIONAL CONDUCT**

18 **Plaintiffs**

19 Counsel for Plaintiffs have read the Court's Guidelines for Professional Conduct
20 promulgated by the United States District Court for the Northern District of California.

21 **Defendants**

22 The attorneys of record for Defendants have reviewed the Guidelines for Professional
23 Conduct for the Northern District of California.

24

25 **21. OTHER MATTERS THAT MAY FACILITATE THE JUST, SPEEDY, AND
26 INEXPENSIVE DISPOSITION OF THIS MATTER**

27 **Plaintiffs**

28 Plaintiffs presently have no other matters to bring to the Court's attention at this time.

1 **Defendants**

2 As outlined above, actual or potential conflict of interest issues may need attention.
3 Defendants reserve all rights as to potential conflict of interests which arise from the
4 representation of multiple Plaintiffs as to the same claims, alleging discriminatory failure to
5 promote as to identical positions.

6 DATED: June 19, 2015

7 SMITH PATTEN
8 SPENCER SMITH
9 DOW W. PATTEN

10 By: _____ /s/ Spencer Smith
11 _____
12 SPENCER SMITH

13 Attorneys for Plaintiffs
14 JOHNSON, ECUNG, MILLER, PALMER,
15 NOBLE, JONES, ROBINSON, ROANE, RICKETTS,
16 TOM, CROCKER, MANSWELL,
17 MINTER, WASHINGTON, WILSON,
18 SHERMAN, HANEY, JOHN, BRISCOE,
19 HARTSFIELD

20 DATED: June 19, 2015

21 DONNA M. MELBY
22 JENNIFER S. BALDOCCHI
23 JI HAE KIM
24 PAUL HASTINGS LLP

25 By: _____ /s/ Donna M. Melby
26 _____
27 DONNA M. MELBY

28 Attorneys for Defendants
29 UNITED AIRLINES, INC. AND
30 CONTINENTAL AIRLINES, INC.

CASE MANAGEMENT ORDER

The above DEFENDANTS' CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions.

In addition, the Court makes the further orders stated below:

IT IS SO ORDERED.

Dated: _____, 2015

Vince Chhabria
United States District Judge